

1 The Honorable Thomas S. Zilly
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7 UNITED STATES DISTRICT COURT FOR THE
8 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

9 ESTATE OF WANGSHENG LENG, by
10 and through administrator, LIPING YANG,

11 Plaintiffs,

12 v.

13 THE CITY OF ISSAQAH, ISSAQAH
14 POLICE OFFICER M. LUCHT #1201, and
15 ISSAQAH POLICE OFFICER KYLEN
WHITTOM, #1210,

16 Defendants.

17 No. 2:19-cv-00490-TSZ

18 DECLARATION OF DAVID B.
19 OWENS IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

20 NOTE ON MOTION CALENDAR:
21 September 11, 2020

22 I, David B. Owens, declare as follows:

23 1. I am one of the attorneys representing the Plaintiff in this lawsuit. I make this
declaration based upon my own personal knowledge, and am competent to testify to the
matters set forth below.

24 2. The following exhibits are cited or relied upon in Plaintiffs' Motion for
Summary Judgment:

25 A. Attached as **Exhibit 1** is a true and correct copy of Liping Yang's
Declaration, signed April 22, 2020.

26 B. Attached as **Exhibit 2** is a true and correct copy of Liping Yang's
Declaration, signed August 8, 2020.

27 C. Attached as **Exhibit 3** is a true and correct copy of Liping Yang's
Deposition, dated March 4, 2020.

D. Attached as **Exhibit 4** is a true and correct copy of James Leming's Interview
Transcript, dated February 5, 2019.

- 1 E. Attached as **Exhibit 5** is a true and correct copy of Laura Asbell's Deposition
2 Transcript, dated March 6, 2020.
- 3 F. Attached as **Exhibit 6** is a true and correct copy of the City's FRCP 30(B)(6)
4 Deposition Transcript, dated May 29, 2020.
- 5 G. Attached as **Exhibit 7** is a true and correct copy of Plaintiff's Notice of
6 30(B)(6) Deposition, dated March 2, 2020.
- 7 H. Attached as **Exhibit 8** is a true and correct copy of the Issaquah Police
8 Department's Policy 1019, an exhibit to the 30(b)(6) deposition, *Personnel
Complaints*.
- 9 I. Attached as **Exhibit 9** is a true and correct copy of the Issaquah Police
10 Department's Policy 340, an exhibit to the 30(b)(6) deposition, *Standards of
Conduct*.
- 11 J. Attached as **Exhibit 10** is a true and correct copy of Commander Wilson's
12 notes, an exhibit to the 30(b)(6) deposition.
- 13 K. Attached as **Exhibit 11** is a true and correct copy of the Issaquah Police
14 Department's Use of Force Log for 2014-2018, Exhibit 5 to the 30(b)(6)
15 deposition.
- 16 L. Attached as **Exhibit 12** is a true and correct copy of the Issaquah Police
17 Department's Policy 310, an exhibit to the 30(b)(6) deposition, *Employee Applied
Force Investigations*.
- 18 M. Attached as **Exhibit 13** is a true and correct copy of the Issaquah Police
19 Department's Policy 300, an exhibit to the 30(b)(6) deposition, *Use of Force*.
- 20 N. Attached as **Exhibit 14** is a true and correct copy of the Issaquah Police
21 Department's Use of Force Report for Incident 18-09645.
- 22 O. Attached as **Exhibit 15** is a true and correct copy of the Issaquah Police
23 Department Policy 322, an exhibit to the 30(b)(6) deposition, *Search and Seizure*.
- 24 P. Attached as **Exhibit 16** is a true and correct copy of the Issaquah Police
25 Department's Policy 306, an exhibit to the 30(b)(6) deposition, *Handcuffing and
Restraints*.
- 26 Q. Attached as **Exhibit 17** is a true and correct copy of the City of Issaquah's
27 Annual Reviews of Use of Force, an exhibit to the 30(b)(6) deposition, for
years 2014, 2015, 2016, 2017 and 2018.
- R. Attached as **Exhibit 18** is a true and correct copy of the Issaquah Police
Department's Organization Chart an exhibit to the 30(b)(6) deposition.
- S. Attached as **Exhibit 19** is a true and correct copy of Scott Behrbaum's
Deposition Transcript, dated March 6, 2020.
- T. Attached as **Exhibit 20** is a true and correct copy of the CAD Details related
to 911 caller James Leming.

1 U. Attached as **Exhibit 21** is a true and correct copy of the City's responses to
 2 Plaintiffs' First Set of Requests for Admission to the City of Issaquah with
 3 Supplemental Responses, dated June 17, 2020.
 4 V. Attached as **Exhibit 22** is a true and correct copy of Whittom's Responses to
 5 Plaintiffs' First Set of Interrogatories to Defendant Whittom, dated July 19,
 6 2019.
 7 W. Attached as **Exhibit 23** is a true and correct copy of Lucht's Responses to
 8 Plaintiffs' First Set of Interrogatories to Defendant Lucht and Responses
 9 Thereto, dated July 19, 2019.
 10 X. Attached as **Exhibit 24** is a true and correct copy of Plaintiff's First Set of
 11 Interrogatories to the City of Issaquah and Responses Thereto, dated July 19,
 12 2019.
 13 Y. Attached as **Exhibit 25** is a true and correct copy of redacted medical records
 14 from Swedish hospital concerning Wangsheng Leng.

10 3. As it concerns the declaration listed as Exhibit 2 above, Plaintiffs position has
 11 always been that there was no reason to suspect or seize Mr. Leng, as alleged in the Complaint,
 12 Dkt. 1, at 6-7, the First Amended Complaint, Dkt. 40 at 6-7, which includes a rejection of the
 13 notion, as Officer Lucht contends, Yang's shirt was pulled up to her chest and he thought
 14 Leng was restraining her. *See* Dkt. 62-7 at 3 ("When I observed the female her t-shirt was
 15 pulled up to her chest, exposing her stomach and it appeared the male was holding her from
 16 behind."). I had believed that Yang's statements to Detective Mike Mellis of the King County
 17 Sheriff's office had demonstrated, definitively, that Lucht was wrong; as Yang clearly stated she
 18 was never grabbed or hit and did not feel any sort of grabbing. In light of Defendants' expert
 19 police practices report from Jeffery Paynter, which I felt ignored Yang's testimony, Yang
 20 signed the first declaration, disclosed in April (a couple weeks after the expert disclosures).
 21 Defendants have made a new argument at summary judgment that the declaration is consistent
 22 with Yang's shirt being pulled up after Leng arrived (which would mean that Leng would have
 23 had to of done this literally in front of the officers after he arrived at the door and is
 24 inconsistent with Lucht's own report). Dkt. 60 at 2 n.1. Regardless, to ensure the Court has an
 25 understanding of the factual disputes here, Yang has provided a second declaration that
 26 expands upon her statements to King County and in her prior declaration. The testimony is
 27 entirely consistent: her shirt was never pulled up. Defendants did not ask Yang about the "shirt

1 issue" at her deposition, and I believed the issue had been definitively resolved by Yang's
2 original interview and subsequent declaration but Defendants' new argument had not ever
3 been addressed (or made) in this litigation before.

4 I declare under penalty of perjury under the laws of the State of Washington that the
5 foregoing is true and correct to the best of my knowledge and belief.
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7 DATED this September 8, 2020, at Seattle, Washington.
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10 **CERTIFICATE OF SERVICE**

11 I, David B. Owens, an attorney, certify that on September 8, 2020, I caused the
12 foregoing to be filed on the court's electronic docket via ECF and thereby effected service on
13 all counsel of record.
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16 /s/David B. Owens
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